



Clerk's review

2009–10 was a year of major change for the Department of the Senate because of the retirement of long-serving and greatly esteemed Clerk, Harry Evans. Harry retired on 4 December 2009, having been Clerk since 17 February 1988, a term of service that will never be matched given the enactment of the Parliamentary Service Act in 1999 which placed a ten-year, non-renewable limit on the terms of the Clerks of the Houses.

After more than 40 years of service to the Senate, Harry Evans's contribution can be measured in much greater terms than simply time served. A renowned expert on parliamentary privilege, Harry was the principal critic of the judgments of Mr Justice Cantor and Mr Justice Hunt in the case of *R v Murphy* which were the catalyst for the enactment of the *Parliamentary Privileges Act 1987*. His next challenge was to rationalise the Senate's standing orders, transforming them from a somewhat antiquated and motley collection into a rational body of rules written in plain English and appropriate for a modern parliament. While the revised standing orders were a codification of existing practice, they contain many examples of Harry's formidable capacity for reducing complicated things to simple and crystal clear prescriptions.

There are many other examples of his ability to devise and draft procedures to give effect to senators' desires to see the Senate performing its functions more effectively. Also formidable is Harry's body of writing on parliamentary matters. In 1994, he produced a new version of the classic text, *Australian Senate Practice*, renamed as *Odgers' Australian Senate Practice* after its first author and Clerk of the Senate from 1965 to 1979, James Rowland (Jim) Odgers. During his time as Clerk of the Senate, Harry produced six editions of this major parliamentary work, ensuring the availability of the most up-to-date information about the evolving Senate, its constitutional position and its procedures. 'The Book', as he fondly called it, remains as a testament to his endeavours to promote the institution of Parliament, and the Senate in particular, as one of the last bulwarks against executive domination. A collection of his other writings was published in February 2010 as a special issue of the department's journal, *Papers on Parliament*.

Senators paid tribute to their retiring Clerk on 19 November 2009 and a recurring theme was the independence and impartiality which Harry

Evans brought to the performance of his office and the fearlessness with which he defended the powers and role of the Senate. While his advice was not always appreciated by governments, Harry achieved the distinction of being criticised by governments of all complexions and respected by all. In the words of the present Leader of the Government in the Senate, Senator the Hon. Chris Evans, his career represents the ‘very best of the concept of public service’.

As a chief executive officer, Harry Evans also represented the highest standards of ethical leadership, probity and the pursuit of value for money on behalf of the taxpayer. The Senate committee inquiry process remains one of the most cost-effective means of scrutinising governments’ policies, operations and legislative proposals, and the Committee Office operates at a fraction of the cost of such agencies as the Productivity Commission or the Australian National Audit Office.

As with all small agencies, however, the department does face financial pressures as a result of the additional 2 per cent efficiency dividend that has been in place for the past two financial years. These years have also seen unprecedented pressure on committees from a record number of inquiries referred by the Senate. We continue to look for ways to ‘work smarter’ to maximise our resources, particularly through the application of information technology solutions where practicable.

There is no doubt that such solutions have revolutionised the publication and distribution of parliamentary documents in the past. Further productivity gains are expected from the Senate Centralised Information Database (SCID) project in the Committee Office and the redevelopment of the document production system used by the Table Office. We will also be responding to the recent report of the Parliamentary Joint Committee on Publications on the development of a digital repository for, and the electronic distribution of, the Parliamentary Papers Series. The first stage of the response will be the development of a business case to examine the various issues that arise from the committee’s recommendations.

Productivity gains made from using technology are all well and good but the greatest capital available to the department comes from the intellectual contribution and skills of its staff. At a time when several senior officers with many years’ service have retired from the department, there has been a focus on training and developing new staff through the department’s professional development program, known as PEP UP, through one-off seminars and through on-the-job learning opportunities that also give staff access to a wider range of duties. The Table Office

also reinstated its popular 'field trips' which provide staff with insights into what happens behind the scenes on a sitting day. The department's new enterprise agreement, recently approved in a staff ballot, continues our commitment to professional growth and development through structured and on-the-job learning and through effective performance communication.

As well as providing training for our own staff, the department is also a provider of training about parliamentary matters to the wider public service. Structured training programs have been provided for the past 20 years on a cost-recovery basis and are an important source of revenue for the department. More important, however, is the dissemination of knowledge to officers at all levels of the public service about the operations of parliament and its constitutional status. We provide these services so that officers can interact effectively with the Parliament but there is clearly a lot more to do in this area.

Over the past year, I have been concerned at the number and nature of episodes demonstrating an apparent lack of knowledge of basic parliamentary processes, a phenomenon which has the potential to impede the effective operations of the Senate. Some examples include the following:

- lack of preparedness on the part of government advisers assisting ministers with the passage of legislation through the Senate and lack of awareness of basic Senate procedures for dealing with different types of amendments, leading to delays and potential errors
- inappropriate circulation of a departmental submission to an inquiry dealing with matters of individual conduct to the offices of ministers whose staff were also subject to the inquiry (and the subsequent production of legal advice to justify this conduct, advice which a committee characterised as wrong, reflecting an ignorance of Senate practice and procedure and based on an erroneous view of the committee's function)
- the issuing of a departmental memorandum (subsequently withdrawn on ministerial instructions) directing personnel not to have any direct contact with a committee (or its staff) conducting an inquiry into matters affecting the agency
- the development of policy (and subsequent drafting instructions) for a tax bill making it a criminal offence to provide information to a parliamentary committee (in direct contradiction of the offence in the *Parliamentary Privileges Act 1987* of penalising a witness for giving

evidence to a House or committee) and requiring the questioning of proceedings in parliament for the trial of the offence (in direct contradiction of Article 9 of the 1689 Bill of Rights)

- the refusal of officers at an estimates hearing to answer questions on the ground that they were protected by a secrecy provision in the Act establishing their agency (in contradiction of the long-established principle that a general secrecy provision has no application to the operations of the Houses or their committees unless there are express words limiting their powers and immunities under section 49 of the Constitution).

In the last sitting week of June, the Senate Privileges Committee received a reference on the adequacy of the *Government guidelines for official witnesses before parliamentary committees*, arising from a committee report on the third episode listed above. The inquiry may provide a forum for some of these issues to be examined. In the meantime, I will also be raising my concerns with the Public Service Commissioner (who is also the Parliamentary Service Commissioner) early in the new financial year to see how we can cooperate on the development of appropriate training.

The year in review has witnessed many highlights.

Nowhere was the value of committee work demonstrated more profoundly than in the National Apology to the Forgotten Australians, offered by the Prime Minister and Leader of the Opposition at a ceremony in Parliament House on 16 November 2009. The apology followed reports by the Community Affairs Committee on child migrants and children in institutional care and was widely welcomed.

The opening of a new segment of the exhibition, 'Acting Wisely', in the first floor exhibition area of Parliament House, brought one of our great national treasures into a more prominent position where it can be seen more readily by visitors to the building. The relocation of the Parliament's 1297 Inpeximus copy of the Magna Carta was followed by the publication by the department of a booklet with an essay by Nicholas Vincent, Professor of Medieval History at the University of East Anglia, on how it came into our hands. Professor Vincent's original new research has produced a tale that makes compelling reading.

The 40th anniversary of the Senate's legislative and general purpose standing committees and estimates committees occurred on 11 June 2010. The event will be marked by a conference later in the year.

The important work that is undertaken on a daily basis in the Table and Committee offices to record the operations of the Senate and its committees, and to preserve those records for posterity, was recognised in a symbolic way by a ceremony held in May 2010 at which the President of the Senate, together with the Speaker of the House of Representatives, handed over to the Director-General of the National Archives of Australia the records of the Federal Parliamentary War Committee which operated between 1915 and 1918.

The future is equally important as the past and it is essential that we are able to adapt to rapidly expanding demands for information via new technologies. Departmental staff made important contributions to the redevelopment of the Parliament's website, an ongoing project relying on contributions from all three parliamentary departments and due for completion in the next reporting period. The Parliamentary Education Office also continued its vital work of introducing our future electors to concepts of parliamentary government and participatory democracy.

The year ahead will include an election period and a chance to clear the decks for a new parliament. Election breaks also allow attention to be devoted to longer term projects. As well as making progress on the various information technology projects referred to earlier, the department will take the opportunity to finalise a structural review, initiated at the beginning of 2010, to take stock of our organisational arrangements, gather fresh ideas about the services we provide and the way we provide them, and to ensure we are making the best use of our resources, with the aim of providing the best possible support to the Senate, its committees and senators.

I thank all staff for their contribution to this important goal over the past year and look forward to working with them in the year ahead. In my first year as Clerk of the Senate, I also express thanks to my colleagues, the Clerk of the House of Representatives and the Secretary of the Department of Parliamentary Services, for their support and trust that we will continue to work cooperatively together in the pursuit of our common goals.

Rosemary Laing
Clerk of the Senate